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Preparatory Commission for the International Criminal Court

Working Group on the Crime of Aggression
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Definition of the crime of aggression and conditions for the exercise of jurisdiction

Discussion paper proposed by the Coordinator

1. For the purposes of this Statute, an act of aggression means an act committed by a State as defined by United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974 and subject to a prior determination by the United Nations Security Council.

2. For the purpose of this Statute, a crime of aggression means an act committed by a person who, being in a position to exercise control over or direct the political or military action of a State, intentionally and knowingly orders or participates actively in the planning, preparation, initiation or waging of an act of aggression, which:

Option 1: by its characteristics and gravity amounts to a war of aggression.

Option 2: has the object or result of establishing a military occupation of, or annexing, the territory of another State or part thereof.

Option 3: is in manifest violation of the Charter of the United Nations.

3. Where the Prosecutor intends to proceed with an investigation in respect of a crime of aggression, the Court shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned as provided for in paragraph 1 of this article. If no Security Council determination exists, the Court shall notify the Security Council of the situation before the Court so that the Security Council may take action, as appropriate, under Article 39 of the Charter of the United Nations.

4. Where the Security Council does not make a determination as to the existence of an act of aggression or invoke article 16 of the Statute within six months from the date of notification,

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Option 1: the Court shall proceed with the case.

Option 2: the Court shall dismiss the case.

Option 3: the Court shall, with due regard to the provisions of Articles 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation within [12] months. In the absence of such a recommendation, the Court may proceed with the case.

Option 4: the Court may request the General Assembly to seek an advisory opinion from the International Court of Justice, in accordance with Article 96 of the Charter and article 65 of the Statute of the International Court, on the legal question of whether or not an act of aggression has been committed by the State concerned. The Court may proceed with the case if the International Court of Justice either:

(a) Gives an advisory opinion that an act of aggression has been committed by the State concerned; or

(b) Makes a finding in proceedings brought under Chapter II of its Statute that an act of aggression has been committed by the State concerned.